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No. 06-1409

In the
Supreme Court of the United States

AMIR X.S., A JUVENILE, *PETITIONER*,

v.

STATE OF SOUTH CAROLINA, *RESPONDENT*.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the South Carolina Supreme Court correctly held that South Carolina's statute prohibiting conduct that wilfully or unnecessarily disturbs a school does not substantially prohibit First Amendment speech, and therefore, is not unconstitutionally overbroad.

II. Whether the South Carolina Supreme Court correctly held Petitioner does not have standing to raise a facial vagueness challenge to South Carolina's "disturbing schools" statute because his conduct clearly fell within the statute's most narrow interpretation.

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STATEMENT OF THE CASE

On October 18, 2004, the State of South Carolina filed a Juvenile Petition in the Greenwood County Family Court alleging that on or about September 27, 2004, Petitioner Amir X. S. ("Amir") wilfully, unlawfully and unnecessarily interfered with and/or disturbed the students and/or teachers at Southside Learning Center[1] ("Southside") in Greenwood County, South Carolina, in violation of S.C. Code §16-17-420 (2003). (Record on Appeal [R.], p. 61). On November 15, 2004, the State filed a second Juvenile Petition alleging that on or about September 27, 2004, Amir assaulted Lynn Martin ("Martin") by swinging at her in an attempt to strike her in the face. (R., p. 62).

The two Petitions were called for an adjudicatory hearing on November 30, 2004, before the Honorable John M. Rucker, Family Court Judge. At the hearing, Amir moved to quash the Petitions on the grounds that §16-17-420 is unconstitutionally vague and overbroad. (R., pp. 63-70). The State argued Amir did not have standing to challenge the constitutionality of the statute since his conduct was clearly encompassed within its terms. The family court denied the Motion on all grounds. (R., pp. 3-8).

Martin, a teacher at Southside, testified Amir was one of her students. She stated he arrived at school on September 27, 2004, and entered the classroom "reluctantly." When the class was given an assignment to work on independently while Martin took attendance and handled other administrative matters, Amir began disrupting the class by getting up from his assigned desk, talking to students across the room, walking to other students' desks, and using profanity. When he was at his desk, he sat on

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[1]Southside is an alternative school in the Greenwood County school system, and is attended by students who have been asked to leave their home schools because of behavior issues.

the back of it with his feet in the seat part, threw papers on the floor, and refused to do his assigned work. (R., pp. 11-13).

Martin, who had been a teacher for thirty-four years, also testified that in accordance with her usual practice when her students are disruptive, she walked to Amir's desk and quietly tried to reason with him, but he continued with the disruptive behavior, and was very rude and disrespectful to her, her assistant and other students in the classroom. This behavior continued for approximately two hours, distracting the other students and interfering with Martin's efforts to teach. (R., pp. 10, 13-16).

Amir then started harassing another student in the class about the student's mother. Martin twice asked him to stop, and when it continued, she felt it was in the best interest of the entire class to remove Amir from the classroom. She asked him to step outside the room, and even though he did come to the door, he yelled all the way. (R., pp. 14-15, 24-25).

Martin opened the classroom door and Amir stepped through it. An administrator was standing in the hall and Martin asked her to take Amir to her office because he was being disruptive. At that point, Amir got upset, turned around and swung at Martin's face, but did not make contact. He continued to yell and curse while the administrator took him down the hall to the office. (R., pp. 15-18).

Amir testified he only got up from his desk two times during the morning of September 27, 2004 - once to sharpen his pencil and once to ask another student a question. He denied using profanity or saying derogatory things about another student's mother. He also testified Martin attempted to grab his arm while he was leaving the classroom and he jerked back but did not try to hit her. (R., pp. 36-42).

The family court found there was sufficient evidence to prove Amir's guilt on both charges beyond a reasonable doubt. The court specifically found that the disrupting of schools started in the classroom and continued in the hall after Amir was removed from the room. (R., p. 47).

Prior to sentencing, a Department of Juvenile Justice ("DJJ") official informed the family court that Amir was adjudicated guilty in December 2003 on three counts of disturbing school and one count of simple assault and battery, and on January 15, 2004, he was sentenced to ninety days commitment at DJJ and twelve months probation. (R., pp. 49-50). The court then sentenced Amir to an indeterminate sentence not to exceed his twenty-first birthday, suspended to a determinate ninety day sentence and one year probation. (R., pp. 57-58). This appeal followed.

By opinion filed November 6, 2006, the South Carolina Supreme Court affirmed Amir's conviction, holding that §16-17-420 does not apply to speech protected by the First Amendment, but only "criminalizes conduct that 'disturbs' or 'interferes' with schools, or is 'obnoxious.'" (Pet. App., p. A8). The Court found the statute is limited in application since it specifically "deals with the disturbance of students and teachers in South Carolina's schools, and not a disturbance in just any public forum," "it does not explicitly prohibit any type of gathering or expression except those which disturb the learning environment in South Carolina's schools," and it only punishes conduct that "wilfully" or "unnecessarily" disturbs or interferes with a school. (Pet. App., p. A9).

The Court also held Amir did not have standing to raise a facial vagueness challenge to §16-17-420 since his conduct clearly fell within the statute's most narrow application. The Court noted Amir had prior notice his conduct was prohibited

since he had previously been charged and convicted of violating the statute. (Pet. App., pp. A11-12).

Amir's request for rehearing was denied by unpublished order dated January 18, 2007. (Pet. App., pp. A15-16). On April 18, 2007, Amir filed a Petition for Writ of Certiorari in this Court, which was docketed on April 24, 2007.

REASONS FOR DENYING THE PETITION

I. South Carolina's "disturbing schools" statute does not unconstitutionally infringe on the freedom of expression guaranteed by the First Amendment.

Amir contends that §16-17-420, which prohibits the wilful or unnecessary interference with or disturbance of the students or teachers of any school or college in South Carolina, is unconstitutionally overbroad because it infringes on freedom of expression guaranteed by the First Amendment of the United States Constitution. He further asserts the statute gives police and other officials unlimited discretionary powers to enforce it based on their subjective views of the conduct at issue.

While government has no power to restrict the citizens' right to use a public place for expressive activity, reasonable time, place and manner restrictions are permitted when necessary to further significant governmental interests. *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972). The nature of a place and the pattern of its normal activities will dictate what time, place and manner restrictions are reasonable. Id. at 116. Expressive activity in a school setting may be prohibited if it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969). "Schools

could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, or incite children to leave the schoolhouse." *Grayned*, 408 U.S. at 119; *see also Cox v. Louisiana*, 379 U.S. 559, 563 (1965) (certain forms of conduct mixed with speech may be regulated or prohibited without infringing on the constitutionally protected right of free speech).

Amir contends §16-17-420 is unconstitutionally overbroad because it "attempts to prohibit one's right to 'disturb' and to 'act in an obnoxious manner'" in any school or college. (Pet., p. 13). As a threshold matter, no one has a "right" to disturb a school. On the contrary, this Court's precedents make it clear that conduct, expressive or not, which disrupts the school environment is not constitutionally protected. *See Tinker*, 393 U.S. at 513; *Grayned*, 408 U.S. at 119.

As the South Carolina Supreme Court held, §16-17-420 is limited by its terms to conduct that disturbs the school environment. Within the school context, the statute prohibits only wilful or unnecessary conduct (disturbing, interfering, loitering, or obnoxious) that may or may not involve expressive activity.[2] Any wilful or unnecessary conduct that disturbs or interferes with students or teachers at a school is prohibited, regardless of its form or content.

The South Carolina Supreme Court found that §16-17-420 is similar to statutes upheld in *Grayned*, *McAlpine v. Reese*, 309 F.Supp. 136 (E.D.Mich. 1970), and *S. H. B. v. State*, 355 So.2d 1176 (Fla. 1978). In *Grayned*, the defendant challenged the constitutionality of an Illinois anti-noise ordinance that prohibited "any noise or diversion which disturbs or tends to disturb the

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[2]To the extent the prohibited conduct includes expression, the statute is absolutely content neutral.

peace or good order of a school" as overbroad and vague. This Court upheld the ordinance, holding that expressive conduct can be restricted in the school setting if it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." 408 U.S. at 118-19.

In *McAlpine*, the district court upheld a Detroit municipal ordinance prohibiting the wilful or malicious making of any noise, disturbance, or improper diversion that disturbed the peace, quietude or good order of any public, private, or parochial school. The court found that the ordinance dealt with a topic of great and fundamental societal interest - the undisturbed operation of schools - and was properly limited to only gatherings or expression that disturbed a school. 309 F.Supp. at 140. When weighing the ordinance's scope against the freedom of expression protected by the First Amendment, the court stated:

> [t]he freedoms of a child to learn in an atmosphere conducive to thought, guidance, and reflection, the freedom of an instructor to teach without fear of disruption of his class or diversion of its attention - - these freedoms are subservient to none. The cloak of the First Amendment is not so broad as to cover their destruction, even their disruption.

Id.

In *S. H. B. v. State*, the court upheld a Florida statute prohibiting the wilful interruption or disturbance of any school or assembly of people meeting for religious worship or any other lawful purpose. The court found that the statute explicitly dealt with a particular kind of disturbance - those involving schools, religious worship gatherings and other lawful assemblies, which are "fragile by their nature," and "generally require a high degree of voluntary restraint and cooperation to produce the harmony

necessary for their effectiveness." 355 So.2d at 1178. The court noted that due to "the innumerable situations and types of conduct involved, the question of what conduct is forbidden must be determined largely on a case-by-case basis." Id.; *see also Grayned*, 408 U.S. at 119 (decision regarding conduct that disrupts normal school activities is made on an individualized basis given the particular fact situation).

Amir's attempts to distinguish §16-17-420 from the statutes at issue in *Grayned* and *McAlpine* are unavailing. He asserts the *Grayned* and *McAlpine* statutes were much narrower than §16-17-420, because they prohibited actions which interfered with the order and quietude of a school, while §16-17-420 "clearly prohibits activities that do not necessarily disrupt the order of the schools." (Pet. p. 17). His assertion simply has no merit.

Section 16-17-420 is entitled "Disturbing Schools," and on its face, only prohibits conduct that wilfully or unnecessarily disturbs South Carolina's schools or colleges. Thus, almost by definition, it requires interference with "the order and quietude" of a school or college.

Amir argues that §16-17-420 "forbids a student debate where one student expresses 'disturbing' ideas and another responds with an 'obnoxious' retort." (Pet., p. 14). The South Carolina Supreme Court expressly rejected that construction of the statute, finding it would not encompass such an "innocent scenario," but is limited to "conduct that materially disrupts *normal school activity* - the very same constitutional line drawn by *Tinker* and its progeny." (Pet. App., pp. A10-11) (emphasis in original).

In construing a state statute, federal courts are bound by the statutory construction given by the State's highest court.

Johnson v. Fankell, 520 U.S. 911, 916 (1997); *Wisconsin v. Mitchell*, 508 U.S. 476, 483-84 (1993); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 (1992); *Kolender v. Lawson*, 461 U.S. 352, 355 (1983). As construed by the South Carolina Supreme Court, the State's highest court, §16-17-420 does not prohibit the free exchange of ideas in school, even during heated debate, but is explicitly limited to the wilful or unnecessary interference with or disturbance of "normal school activity." Under *Tinker* and *Grayned*, the statute is a reasonable time, place and manner restriction on activity in or around schools, and it is not constitutionally overbroad.

II. Petitioner does not have standing to challenge South Carolina's "disturbing schools" statute as unconstitutionally vague.

Amir also contends the South Carolina Supreme Court erred in holding he did not have standing to challenge §16-17-420 as unconstitutionally vague since the most narrow construction of the statute clearly applied to his conduct. He asserts that the standing analysis the Supreme Court used in this case only applies in cases which do not implicate First Amendment rights.

This Court has carved out certain limited exceptions to the traditional rule that a person to whom a statute may constitutionally be applied may not challenge the statute on the ground that it could conceivably be applied unconstitutionally to others. One such exception is a facial overbreath challenge to a statute which seeks to regulate pure speech. *Broadrick v. Oklahoma*, 413 U.S. 601, 610-613 (1973); *see also Hynes v. Mayor and Council of Borough of Oradell*, 425 U.S. 610, 633 (1976) (J. Rehnquist, dissenting opinion) ("Broadrick recognized that it is only the application of the doctrine of 'overbreath' which sometimes permits limited exceptions to the traditional rules of standing in the First Amendment area.").

A cursory review of the South Carolina Supreme Court's opinion in this case reveals the court was cognizant of the relaxed standing rule when First Amendment rights are implicated, and it applied that relaxed rule in its overbreath analysis. After determining the statute is not unconstitutionally overbroad, the Court appropriately applied the traditional standing analysis for vagueness challenges. (Pet. App., pp. A3-5).

"The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *City of Beaufort v. Baker,* 315 S.C. 146, 152, 432 S.E.2d 470, 472 (1993). The constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982); *Huber v. South Carolina State Bd. of Physical Therapy Exam'rs,* 316 S.C. 24, 446 S.E.2d 433 (1994). A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

The fact that a statute might be interpreted to apply to other behaviors is irrelevant to a void for vagueness analysis when the instant conduct falls squarely within the "hard core" of the statute's application. *Broadrick*, 413 U.S. at 608. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." Id. at 610; *see also Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982); *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001), *cert. denied* 535 U.S. 926 (2002) (a defendant does not

have standing to challenge the constitutionality of a statute on the ground that it invades the constitutional rights of others).

Amir argues the "disturbing schools" statute is unconstitutionally vague because it does not define the terms "disturb," "interfere," "loiter," and "obnoxious," and therefore, it is impossible to determine what conduct is prohibited. All the terms Amir references have common, ordinary meanings sufficient to identify the prohibited conduct, and therefore, do not need to be specifically defined, particularly in light of the context in which they are used. *See McAlpine*, 309 F.Supp. at 140 (ordinance need not spell out the infinite ways in which a place of learning may be disturbed, its students diverted, or its teachers turned from teaching); *see also Lowry v. Adams*, 344 F.Supp. 446, 455-56 (W.D. Ky. 1972) (statutory language gets its meaning and contour from its context, its association, and its commonly understood usage); *State v. Silva*, 86 N.M. 543, 525 P.2d 903, 906 (N.M. Ct. App. 1974) (citing numerous cases upholding similar terms in statutes applicable to the school context).

In any event, the South Carolina Supreme Court correctly concluded that Amir's conduct on September 27, 2004, clearly falls within even the most narrow construction of §16-17-420, and he was well aware of the consequences of such conduct. In December 2003, Amir was adjudicated on three counts of disturbing a school, and sentenced to a ninety day determinate sentence and one year probation. His probation started on April 15, 2004, and on April 19, four days after he returned to school, Amir announced to his class that he intended to attempt to break a school rule every day until the end of the school year, and thereafter, he made every effort to do so. On April 27, 2004, less than two weeks into his probation, school officials were forced to

contact law enforcement because Amir's conduct was interfering with the learning environment.[3] (R., pp. Amended R., pp. 1-3).

Amir's desire to disrupt school apparently continued in the new school year until the incidents of September 27. On that date, in spite of Martin's patient attempts to settle him down, Amir continued disrupting the class. His bad behavior, which continued for over two hours and included talking, getting out of his desk and walking around, cursing, and harassing another student, escalated until Martin was forced to remove him from the classroom, and he attempted to hit her in the face. Even after he was removed from the classroom, Amir continued to disrupt the school environment by yelling and cursing while he was being escorted down the hall to the office. (R., pp. 10-18, Amended ROA, pp. 4-6).

There can be no doubt that Amir's conduct falls squarely within the "hard core" of §16-17-420. The record reveals Amir purposely engaged in similar intentionally disruptive behavior on other occasions, and was adjudicated guilty on three counts of disturbing a school in December 2003, less than a year before the incidents at issue in this case. Therefore, he was well aware of the consequences of such conduct, and on September 27, 2004, he made the decision to continue his disruptive behavior in spite of those consequences. Since his conduct is clearly encompassed within §16-17-420 as written and construed by the South Carolina Supreme Court, Amir has no standing to challenge the statute as unconstitutionally vague.

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[3]The Incident Report states that a petition charging Amir with disturbing school was going to be filed.

CONCLUSION

Based on the foregoing, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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